STATE OF MICHIGAN

COURT OF APPEALS

ELIZABETH BAKER,

Plaintiff-Appellant,

v

VISSER BROTHERS, INC., doing business as VISSER BROTHERS CONSTRUCTION, TWIN LAKES NURSERY, INC., LORMAX STERN DEVELOPMENT COMPANY LLC, and EAST BELTLINE DEVELOPMENT LLC,

Defendants-Appellees.

UNPUBLISHED
September 17, 2020

No. 351890
Kent Circuit Court
LC No. 18-008184-NO

Before: REDFORD, P.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

Plaintiff, Elizabeth Baker, appeals as of right the trial court's grant of summary disposition to defendants and the dismissal of her personal injury claims related to her trip and fall after she stepped into a hole in a decorative metal grate that surrounded a tree planted in the sidewalk in front of a store located in a strip mall. We affirm.

I. BACKGROUND FACTS AND PROCEDURAL HISTORY

On the evening of May 13, 2017, at approximately 9:00 p.m., plaintiff, her husband, and their two children arrived at the strip mall intending to dine at a pizza restaurant. The storefronts in the strip mall had a cement sidewalk that featured small trees planted periodically along the curb area of the sidewalk near parking spots for business customers. The holes in which the trees were planted were topped with decorative metal grates inset flush with the sidewalk. The tree trunks grew through a central hole and the grates also had two 9.5 inch diameter holes at each corner along the curbside of the grates designed for placement of lighting fixtures. Although other grates in the strip mall had lighting fixtures installed, the one near the pizza restaurant did not and had mulch that filled the holes to about three inches from the top.

Plaintiff's husband parked the family vehicle in a spot located in front of a frozen yogurt shop adjacent to the pizza restaurant. Plaintiff exited the vehicle, stepped onto the sidewalk area

near the curb and in front of the family van, and proceeded around the van to the driver's side. When she reached the van's driver's side front corner, she stepped into one of the holes in the metal grate, tripped and fell off the curb against the vehicle parked next to the van. She sustained broken bones in her right leg, foot, and ankle, and ligament damage.

Plaintiff sued defendants Lormax Stern Development Company, LLC (Lormax), East Beltline Development, LLC (East Beltline Development), and Visser Brothers, Inc (Visser Brothers) and later amended her complaint to add defendant Twin Lakes Nursery, Inc. (Twin Lakes). Plaintiff alleged that East Beltline Development owned the subject property, Lormax developed the strip mall, Visser Brothers d/b/a Visser Brothers Construction constructed the strip mall, and Twin Lakes contracted with Lormax to install and maintain the landscaping. She alleged that Visser Brothers committed ordinary negligence and that Twin Lakes negligently designed, constructed, and installed the landscaping and failed to maintain the landscaping where she fell. She alleged further that, as a business invitee, all defendants owed her duties that were breached by creating the hazard she encountered and not maintaining the premises in a reasonably safe condition or they failed to inspect and warn her of hazardous conditions on the land.

Visser Brothers moved for summary disposition on both counts against it and plaintiff did not oppose the dismissal of her premises liability claim against it but argued that an issue of fact precluded the dismissal of her ordinary negligence claim. The trial court agreed and granted in part and denied in part Visser Brothers' motion. Lormax and East Beltline Development later moved for summary disposition under MCR 2.116(C)(10). Visser Brothers again moved for summary disposition of plaintiff's ordinary negligence claim under MCR 2.116(C)(10). The trial court held a hearing and granted Lormax and East Beltline Development's motion on the ground that they did not owe plaintiff a duty because the condition on the land was open and obvious. The trial court also granted Visser Brothers' motion on the ground that plaintiff failed and could not establish the proximate cause element of her claim against it.

Plaintiff moved for reconsideration on the grounds that the trial court mistakenly considered Visser Brothers' motion unopposed despite her filing an opposition brief. She also sought reconsideration because the order stated that the ruling resolved the last pending claims when her claims remained against Twin Lakes which had not moved for summary disposition. In her supporting brief, plaintiff argued that the trial court committed palpable error by not considering her brief in opposition to Visser Brothers' motion which led the trial court to make legal errors requiring that it reconsider its decision and deny the motion. Plaintiff asserted that the trial court erroneously stated that she failed to oppose the motion. Plaintiff argued that the trial court violated her constitutional right to due process because the trial court failed to consider her arguments in opposition to Visser Brothers' motion; and if corrected, would lead to a different result. Plaintiff argued further that the open and obvious doctrine did not apply to Visser Brothers against whom she alleged an ordinary negligence claim. She also argued that the trial court erred by ruling that Lormax and East Beltline Development's failure to install lighting in the metal grate's holes served as an intervening superseding cause that cut off Visser Brothers' liability. Plaintiff contended that Visser Brothers' negligence could not be superseded by third party conduct because of the foreseeability of her accident, and even if Visser Brothers' defense had viability, the question whether an intervening act constituted a superseding cause remained a question of fact for a jury to decide. She also asserted that the trial court's ruling could not be a final ruling because Twin Lakes had not filed a motion for summary disposition resulting in plaintiff's claim

against it remaining unresolved. The trial court issued its written opinion and order in which it stated that it had not received a copy of plaintiff's response to Visser Brothers' motion but that it reviewed plaintiff's response brief filed with the clerk's office on March 27, 2019. The trial court concluded that she had not demonstrated the necessity of a different disposition of the case because she presented the same issues ruled on by the court and failed to demonstrate a palpable error by which the trial court had been misled. The trial court, therefore, denied plaintiff's motion for reconsideration.

Later, plaintiff and Twin Lakes stipulated to the dismissal of plaintiff's claims against Twin Lakes with prejudice. The trial court entered an order of dismissal and indicated that the order disposed of all claims and adjudicated the rights of all the parties and closed the case. This appeal followed.

II. STANDARDS OF REVIEW

We review de novo constitutional issues and any other questions of law that are raised on appeal. *Forge v Smith*, 458 Mich 198, 204; 580 NW2d 876 (1998); *Hinojosa v Dep't of Natural Resources*, 263 Mich App 537, 541; 688 NW2d 550 (2004). We also review de novo a trial court's summary disposition decision to determine if the moving party was entitled to judgment as a matter of law. *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 5; 890 NW2d 344 (2016). We also review de novo a trial court's decision regarding whether a party owed a duty to another. *Fultz v Union-Commerce Assoc*, 470 Mich 460, 463; 683 NW2d 587 (2004). A motion brought under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim, and is reviewed by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Summary disposition is proper if there is "no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id*. A genuine issue of material fact exists when "reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008). This Court considers the evidence that was properly presented to the trial court in deciding the motion. *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 310; 660 NW2d 351 (2003). As explained in *Peña*,

> The moving party has the initial burden of supporting its position with documentary evidence, but once the moving party meets its burden, the burden shifts to the nonmoving party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material facts exists. The moving party is entitled to a judgment as a matter of law when the proffered evidence fails to establish a genuine issue regarding any material fact. [*Id*. (quotation marks and citations omitted).]

III. ANALYSIS

A. CLAIMS AGAINST VISSER BROTHERS

Plaintiff first argues that the trial court violated her right to due process by not considering her brief in opposition to Visser Brothers' motion for summary disposition. We disagree.

Both the United States Constitution and the Michigan Constitution "preclude the government from depriving a person of life, liberty, or property without due process of law." *Hinky Dinky Supermarket, Inc v Dep't of Cmty Health*, 261 Mich App 604, 605; 683 NW2d 759 (2004), citing US Const, Am XIV; Const 1963, art 1, § 17. Due process is a flexible concept that calls for such procedural safeguards as the situation demands. *In re Brock*, 442 Mich 101, 111; 499 NW2d 752 (1993); *Mathews v Eldridge*, 424 US 319, 332, 334; 96 S Ct 893; 47 L Ed 2d 18 (1976). Due process generally requires nothing more than notice of the nature of the proceedings and an opportunity to be heard in a meaningful manner. *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995). In *In re TK*, 306 Mich App 698, 706-707; 859 NW2d 208 (2014) (quotation marks and citations omitted), this Court explained:

> Generally, three factors should be considered to determine what is required by procedural due process:
>
> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

In *Bonner v City of Brighton*, 495 Mich 209, 238-239; 848 NW2d 380 (2014) (quotation marks and citations omitted), our Supreme Court explained:

> The essence of due process is the requirement that a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it. All that is necessary, then, is that the procedures at issue be tailored to the capacities and circumstances of those who are to be heard to ensure that they are given a meaningful opportunity to present their case, which must generally occur before they are permanently deprived of the significant interest at stake.

In *Cummings*, 210 Mich App at 253 (citation omitted), this Court explained that constitutional sufficiency requires

> notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker. The opportunity to be heard does not mean a full trial-like proceeding, but it does require a hearing to allow a party the chance to know and respond to the evidence.

In this case, the trial court entered a case scheduling order on December 4, 2018, that directed the parties to file summary disposition briefs and supporting materials with the court clerk

with one copy of all such materials designated as a judge's copy to be filed directly with the assigned judge. "A trial court has the inherent authority to control its own docket[. . .and] 'possess[es] inherent authority . . . to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.' " *Baynesan v Wayne State Univ*, 316 Mich App 643, 651; 894 NW2d 102 (2016) (citations omitted). Although plaintiff asserts that she filed a brief that opposed Visser Brothers' summary disposition motion with the court clerk on July 31, 2019, and the Register of Actions indicates that she did so, plaintiff does not state that she obeyed the trial court's directive and filed a judge's copy of the brief directly with the assigned judge. Her omission of clarification in this regard calls into question her claim that the trial court violated her rights by not considering her brief. The record indicates that the parties knew of the trial court's scheduling order directive. The record is unclear whether plaintiff neglected to deliver a copy to the assigned judge in violation of the trial court's scheduling order. If she failed to do as directed and the trial court did not review her brief before the hearing, her failure to comply with the trial court's directive cannot serve as the ground for finding a constitutional violation because she had the means and opportunity to present her position to the trial court.

Regardless, the record reflects that the trial court provided plaintiff an opportunity to express and explain the grounds for her opposition to Visser Brothers' motion. Although the record reflects that the trial court did not review her brief as part of its analysis of the issues presented in Visser Brothers' motion and initially considered the motion unopposed, de novo review indicates that the trial court gave plaintiff opportunity at the hearing on defendants' respective motions to state her grounds for opposition to Visser Brothers' motion. Plaintiff's counsel took the opportunity to address and explain plaintiff's opposition, albeit not as completely as she did in her opposition brief. The record reflects that plaintiff had a meaningful opportunity to present her case and the trial court did not prevent her counsel from expressing her opposition. The record also reflects that the trial court reviewed and considered plaintiff's arguments made in her motion for reconsideration following the trial court's decision to grant summary disposition to Visser Brothers. In her motion, plaintiff expressed her opposition to each of Visser Brothers' grounds for summary disposition of her negligence claim. The trial court heard her arguments and considered them, and although the record indicates that the trial court did not read plaintiff's brief in opposition to Visser Brothers' motion, plaintiff had a meaningful opportunity to present her case and did so. The trial court, therefore, did not deprive plaintiff of her right to due process.

Plaintiff also argues that the trial court erred by granting Visser Brothers summary disposition of her ordinary negligence claim because the open and obvious doctrine did not apply and erred respecting her premises liability claim against Lormax and East Beltline Development because a genuine issue of material fact existed whether the metal grate's hole had sufficient illumination for her to see it so that the open and obvious doctrine did not apply. Plaintiff's arguments lack merit.

Claims premised on conditions of land and those sounding in ordinary negligence are distinct. *James v Alberts*, 464 Mich 12, 18-19; 626 NW2d 158 (2001). This Court determines whether a claim sounds in ordinary negligence or premises liability by examining "the complaint as a whole" and by looking "beyond mere procedural labels to determine the exact nature of the claim." *Adams v Adams (On Reconsideration)*, 276 Mich App 704, 711; 742 NW2d 399 (2007). This Court explained in *Buhalis v Trinity Continuing Care Servs*, 296 Mich App 685, 692; 822 NW2d 254 (2012), that an action sounds exclusively in premises liability rather than ordinary

negligence if a plaintiff's injuries arose from an allegedly dangerous condition of the land. "[T]his is true even when the plaintiff alleges that the premises possessor created the condition giving rise to the plaintiff's injury." *Id*. A plaintiff who states a claim of premises liability cannot assert a claim of ordinary negligence against a defendant solely because it created the dangerous condition, unless the plaintiff establishes that the defendant actively through direct conduct independently caused the plaintiff's accident. *Pugno v Blue Harvest Farms, LLC*, 326 Mich App 1, 15-16; 930 NW2d 393 (2018). Claims of failure to protect and warn sound only in premises liability. *Id*. at 16. "A plaintiff cannot avoid the open and obvious danger doctrine by claiming ordinary negligence, when the facts only support a premises liability claim." *Wilson v BRK, Inc*, 328 Mich App 505, 512; 938 NW2d 761 (2019) (quotation marks and citation omitted).

In this case, plaintiff's amended complaint alleged that she suffered injury from a condition on the premises. Analysis of her amended complaint as a whole and looking beyond mere procedural labels in her pleading establishes that her claims sounded in premises liability. Accordingly, her ordinary negligence claim against Visser Brothers lacked legal viability despite being couched as an ordinary negligence theory of liability. Because her accident arose from a condition on the land, Michigan law required the trial court to rule that plaintiff could not assert a claim of ordinary negligence against Visser Bothers. Plaintiff's claims sounded in premises liability entitling Visser Brothers to dismissal of all claims against it including her ordinary negligence claim. *Id*. at 512-513; *Pugno*, 326 Mich App at 16; *Buhalis*, 296 Mich App at 692.

"Under the principles of premises liability, the right to recover for a condition or defect of land requires that the defendant have legal possession and control of the premises." *Morrow v Boldt*, 203 Mich App 324, 328; 512 NW2d 83 (1994). Possession and control are required because the one with possession and control is usually in the best position to prevent harm to others. *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 662; 575 NW2d 745 (1998). Where a defendant does not have possession and control over the premises, it does not owe an invitee a duty. *Orel v Uni-Rak Sales Co, Inc*, 454 Mich 564, 565; 563 NW2d 241 (1997). "[T]he existence of a legal duty is a question of law for the court to decide." *Anderson v Wiegand*, 223 Mich App 549, 554; 567 NW2d 452 (1997) (citation omitted). If there is no duty, summary disposition is proper. *Beaudrie v Henderson*, 465 Mich 124, 130; 631 NW2d 308 (2001).

In this case, Visser Brothers did not own, possess, or control the subject property at the time of her accident which precluded plaintiff from asserting a premises liability claim against it. Further, plaintiff did not plead or prove that Visser Brothers did anything after it turned over possession and control to Lormax and East Beltline Development. Accordingly, as explained in *Pugno*, Visser Brothers had no duty to plaintiff and plaintiff asserted no viable claim against it. Therefore, Visser Brothers was entitled to summary disposition of plaintiff's ordinary negligence claim. The trial court, therefore, should have granted Visser Brothers' first motion for summary disposition of all claims against it. When the trial court addressed Visser Brothers' second motion for summary disposition, it should have granted Visser Brothers summary disposition because plaintiff could not state an ordinary negligence claim against it. The trial court granted Visser Brothers' motion, albeit for a different reason. The trial court reached the right result, and therefore, we affirm.

B. CLAIMS AGAINST LORMAX AND EAST BELTLINE DEVELOPMENT

Plaintiff's premises liability claims against Lormax and East Beltline Development were subject to the application of the open and obvious doctrine. "In general, a premises possessor owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). However, this duty does not extend to open and obvious dangers. *Joyce v Rubin*, 249 Mich App 231, 238; 642 NW2d 360 (2002). The open and obvious doctrine protects against liability regardless of the alleged theories of liability and despite creative pleading to avoid the application of the doctrine. *Millikin v Walton Manor Mobile Home Park, Inc*, 234 Mich App 490, 497; 595 NW2d 152 (1999).

The threshold issue in a premises liability action is whether the defendant owed the plaintiff a duty. *Fultz*, 470 Mich at 463. "Duty is essentially a question of whether the relationship between the actor and the injured person gives rise to any legal obligation on the actor's part for the benefit of the injured person." *Moning v Alfono*, 400 Mich 425, 438-439; 254 NW2d 759 (1977). "In a premises liability action, a plaintiff must prove the elements of negligence: (1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty, (3) the breach was the proximate cause of the plaintiff's injury, and (4) the plaintiff suffered damages." *Benton v Dart Props, Inc*, 270 Mich App 437, 440; 715 NW2d 335 (2006) (citation omitted). "The duty owed to a visitor by a landowner depends on whether the visitor was a trespasser, licensee, or invitee at the time of the injury." *Sanders v Perfecting Church*, 303 Mich App 1, 4; 840 NW2d 401 (2013).

In this case, the parties and the trial court agreed that plaintiff had invitee status. In *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596-597; 614 NW2d 88 (2000), our Supreme Court explained the requisite standard of care owed by a landowner to an invitee as follows:

> An "invitee" is a person who enters upon the land of another upon an invitation which carries with it an implied representation, assurance, or understanding that reasonable care has been used to prepare the premises, and make it safe for the invitee's reception. The landowner has a duty of care, not only to warn the invitee of any known dangers, but the additional obligation to also make the premises safe, which requires the landowner to inspect the premises and, depending upon the circumstances, make any necessary repairs or warn of any discovered hazards. Thus, an invitee is entitled to the highest level of protection under premises liability law.
>
> A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if the owner: (a) knows of, or by the exercise of reasonable care would discover, the condition and should realize that the condition involves an unreasonable risk of harm to such invitees; (b) should expect that invitees will not discover or realize the danger, or will fail to protect themselves against it; and (c) fails to exercise reasonable care to protect invitees against the danger. [Quotation marks and citations omitted.]

Michigan law, however, does not charge landowners "with guaranteeing the safety of every person who comes onto their land." *Hoffner v Lanctoe*, 492 Mich 450, 459; 821 NW2d 88 (2012)

(citation omitted). Both landowners and visitors must "exercise common sense and prudent judgment when confronting hazards on the land." *Id*. Michigan law does not require perfection from landowners and requires that visitors take personal responsibility to take reasonable care for their own safety. *Id*. at 460.

A landowner has no duty to warn or protect a visitor from open and obvious dangers "because such dangers, by their nature, apprise an invitee of the potential hazard, which the invitee may then take reasonable measures to avoid." *Id*. at 460-461 (citations omitted). In *Lugo*, 464 Mich at 516, our Supreme Court clarified that "the open and obvious doctrine should not be viewed as some type of 'exception' to the duty generally owed invitees, but rather as an integral part of the definition of that duty."

Whether a particular hazard is open and obvious involves an objective standard; a hazard is open and obvious if "an average person with ordinary intelligence would have discovered it upon casual inspection." *Hoffner*, 492 Mich at 461 (citations omitted). A landowner will remain liable if "special aspects of a condition make even an open and obvious risk unreasonable." *Id*. When an open and obvious danger has special aspects that make it unreasonably dangerous notwithstanding its open and obvious character, the landowner must still take reasonable steps to protect the invitee. *Id*. In *Hoffner*, our Supreme Court explained two instances in which an otherwise open and obvious hazard could have special aspects that may give rise to liability:

> when the danger is unreasonably dangerous or when the danger is effectively unavoidable. In either circumstance, such dangers are those that give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided and thus must be differentiated from those risks posed by ordinary conditions or typical open and obvious hazards. Further, we have recognized that neither a common condition nor an avoidable condition is uniquely dangerous. Thus, when a plaintiff demonstrates that a special aspect exists or that there is a genuine issue of material fact regarding whether a special aspect exists, tort recovery may be permitted if the defendant breaches his duty of reasonable care. [*Id*. at 463 (quotation marks and citations omitted, emphasis in the original).]

Our Supreme Court reiterated the principle previously articulated in *Lugo*, that the open and obvious doctrine cuts off liability if the condition creates a risk of harm only because the invitee fails to discover the condition or realize its danger, and only if the risk of harm remains unreasonable despite its obviousness must a landowner take reasonable precautions. *Id*. at 463. Our Supreme Court explained that, for a hazard to be "effectively unavoidable" and excepted from the application of the open and obvious doctrine, the plaintiff must have no choice but to encounter the hazard. *Id*. at 468. Our Supreme Court emphasized:

> [W]hen confronted with an issue concerning an open and obvious hazard, Michigan courts should hew closely to the principles previously discussed. It bears repeating that exceptions to the open and obvious doctrine are narrow and designed to permit liability for such dangers only in limited, extreme situations. Thus, an "unreasonably dangerous" hazard must be just that—not just a dangerous hazard, but one that is unreasonably so. And it must be more than theoretically or retrospectively dangerous, because even the most unassuming situation can often

> be dangerous under the wrong set of circumstances. An "effectively unavoidable" hazard must truly be, for all practical purposes, one that a person is required to confront under the circumstances. A general interest in using, or even a contractual right to use, a business's services simply does not equate with a compulsion to confront a hazard and does not rise to the level of a "special aspect" characterized by its unreasonable risk of harm. [*Id*. at 472-473 (citations omitted, emphasis in the original).]

Our Supreme Court also directed that trial courts must not focus "on the subjective degree of care used by the plaintiff." *Lugo*, 464 Mich at 523-524. Rather, the test requires application of an objective standard based on an average person of ordinary intelligence. *Hoffner*, 492 Mich at 461. Further, if a person is not compelled to encounter the hazard and an alternative means of avoidance existed, an owner, possessor, or controller of the premises cannot be held liable. *Wilson*, 328 Mich App at 515.

In this case, the trial court applied the appropriate objective analysis and concluded correctly that the hazard presented by the hole in the grate was open and obvious. The photos submitted by the parties taken by plaintiff's husband shortly after plaintiff's trip and fall on the evening of her accident depicted the area where plaintiff's accident occurred. The photos indicate that the ambient light from the nearby streetlights and from the storefronts illuminated the area sufficiently to permit a person of ordinary intelligence upon casual inspection to notice the potential hazard posed by the metal grate's holes.

Further, plaintiff's testimony indicates that the area was not "pitch dark" at the time of her accident. She testified that she saw the tree, that ambient light existed on the sidewalk, and that she saw the holes in the grate after she fell. When asked by defense counsel if she could have seen the holes before she fell, she testified that she did not know. She also testified that she did not know if she looked down before she fell. When asked where she looked as she walked around the front of her vehicle, she testified that she did not recall. Later she changed her testimony to state that the area was not illuminated enough for her to see the hole, but such testimony went to her subjective experience and not an objective analysis of the evidence.

The record reflects that the trial court considered all of the evidence and objectively analyzed it for its determination. The record evidence supports the trial court's conclusion. The trial court did not err by observing that the hole encountered by plaintiff lacked any obstruction to view despite the failing evening light. Plaintiff submitted a document that specified the time of sunset and the duration of twilight on the date of her accident. That evidence revealed that the sun set at 8:57 p.m. and twilight lasted until 9:29 p.m. Plaintiff testified that her accident occurred around 9:15 p.m. The trial court could reasonably conclude from the record evidence that the area had sufficient light from the twilight and the ambient light from artificial lighting in the area to illuminate the metal grate sufficiently to disclose the holes. The trial court, therefore, did not err by applying the open and obvious doctrine in this case.

IV. CONCLUSION

The trial court did not err by dismissing plaintiff's ordinary negligence claim against Visser Brothers because plaintiff's claims sounded in premises liability and consequently she could not state a viable claim of ordinary negligence against Visser Brothers. Because this ruling is

dispositive, we decline to consider plaintiff's other arguments regarding Visser Brothers. The trial court also did not err by ruling that the condition on the land consisted of an open and obvious hazard of which Lormax and East Beltline Development owed plaintiff no duty. Accordingly, the trial court properly granted summary disposition to Visser Brothers, Lormax, and East Beltline Development.

Affirmed.

/s/ James Robert Redford
/s/ Jane M. Beckering
/s/ Michael J. Kelly